

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1179/P2dn  
DAK:kjf:jf

March 2, 2005

To Senator Roessler:

This draft continues to be in preliminary form, because numerous questions arose in redrafting, and I would appreciate your having whoever you feel appropriate review this version. These are my questions:

1. Section 51.13 (1) (a), stats., does not seem to be congruent with s. 51.47 (2) (b), (c), and (d), stats., with respect to detoxification of up to 72 hours. Should an exception be drafted to s. 51.13 (1) (a), stats., for this circumstance? Please also see s. 51.45 (10) (am) and (11) (a), stats., and my draft of s. 51.61 (6) (b) 2.
2. I have revised s. 51.13 (1) (e) and incorporated into it the language currently in s. 51.13 (1) (f), stats., and created s. 51.13 (1) (em), to clarify that the standard for approval of admission applies to an admission under s. 51.13 (1) (c) or (d), stats., as well as to an admission under s. 51.13 (1) (a) or (b), stats. Since s. 51.13 (2), stats., is being repealed in this draft, the standards under s. 51.13 (1) also apply to a minor's private inpatient admission. To further make public and private admissions and other treatment of minors identical, I have amended s. 51.22 (2), stats. Please review.
3. Please review the treatment of s. 51.13 (3) (am) (which consolidates s. 51.13 (a) and (c), stats.); have I characterized the rights as you intend?
4. Please review the amendment to s. 51.13 (3) (b), stats., which, under this bill, applies only to a minor admitted under s. 51.13 (1) (c) 1. or 2. This paragraph currently refers to "the minor's right to consent to or refuse treatment as provided in s. 51.61 (6)." Please review ss. 51.61 (6) (b) 5. and 51.135 (1), which enable such a minor aged at least 14 (one for whom a parent refuses to consent to admission or is unavailable) to consent to psychotropic medication on his or her own behalf.
5. I have made admission, treatment, etc., of minors admitted for treatment for developmental disability identical to that for minors admitted for treatment for mental illness.
6. My notes indicate that the group present at the meeting on January 25, 2005, agreed that a review under s. 51.13 (4), stats., should be held at the request of the minor. However, under s. 51.13 (4) (a), stats., currently, the petition for review is required to be filed without exception, by the treatment director of the facility or by the director

of the center for the developmentally disabled, so it seemed to me unnecessary additionally to permit the minor to file. Moreover, under s. 51.13 (4) (d), stats., a minor (or a parent or guardian) may request a hearing. If my understanding of the minor's right is incorrect, please let me know, and I will redraft.

7. Under this draft, if a minor aged 14 or older refuses to consent to admission for inpatient treatment of mental illness or developmental disability, his or her parent or guardian may consent on the minor's behalf. Under current law, a minor aged 14 or older who has been admitted is able to request and receive discharge within 48 hours; that right is extinguished under this draft except for minors who have sought admittance and been admitted despite the refusal or other failure of a parent or guardian to consent. Under current law, any unwillingness on the part of a minor for inpatient treatment must be noted on the petition for review (s. 51.13 (4) (a) 6., stats.); in order to permit voluntary admission under s. 51.13, stats., the court must determine whether the admission is voluntary on the part of the minor (s. 51.13 (4) (d) and (g) (intro.), stats.; the court must hold a hearing to review the admission within 14 days if a notation of the minor's unwillingness appears on the face of the petition (s. 51.13 (4) (d), stats.); the court may not permit or order placement to the northern or southern centers for the developmentally disabled unless the minor approves (s. 51.13 (4) (g) 1., stats.); the director or staff of the treatment facility must file a written request with the court to determine the continued appropriateness of an admission if they observe conduct by the minor that demonstrates an unwillingness to remain at the facility (s. 51.13 (7) (c), stats.); under s. 51.35 (3) (b), stats., the court must determine whether the transfer of a minor aged 14 or older to an inpatient facility is, among other things, voluntary on the part of the minor; and under s. 51.35 (4) (c), stats., the director of an inpatient facility may discharge a patient voluntarily admitted under s. 51.13 under a best interest standard. If a notation of the minor's unwillingness appears on the face of the petition, the court must hold a hearing and appoint counsel or a guardian ad litem for the minor. I have done the following:

a. Amended s. 51.13 (4) (d), stats., so that a court must dismiss the petition, order an independent evaluation, or hold a hearing for a minor who refused to execute an application but whose parent or guardian executed it on his or her behalf.

b. Amended s. 51.13 (4) (g) (intro.), stats., to repeal the requirement that the court find that the admission is voluntary on the part of the minor, since these findings may be the result of a hearing held for a minor who refuses to execute an application.

c. Repealed s. 51.13 (4) (g) 1., stats.; should, instead, this provision be retained for a minor admitted under s. 51.13 (1) (c) 1., stats.?

d. Amended s. 51.35 (3) (b), stats., to make it similar to s. 51.13 (4) (d), as affected by this draft.

e. Not affected s. 51.35 (4) (c), stats.

8. My notes indicate that the group felt that s. 51.13 (7) (a), stats., particularly the last sentence, should be changed; however, I'm uncertain what change is sought. Please review my amendment in the *second* sentence, which provides for a minor's refusal.

Does a minor who is under 14 and who was admitted for inpatient treatment of alcoholism or other drug abuse get a review such as the one specified under this paragraph?

9. Should a minor aged 14 or older who refuses to execute an application but whose parent or guardian admits under s. 51.13 (6) (a), stats., for short-term diagnosis and evaluation, be entitled to a review under s. 51.13 (4), stats.?

10. I have accorded a minor who receives a hearing under s. 51.13 (7) (c), stats., the rights (including an independent evaluation) of a minor who receives a hearing under s. 51.13 (4) (d), stats. Also, there seem to be no standards for the court to use in making a determination under s. 51.13 (7) (c), stats., so I have required the court to use the standards specified in s. 51.13 (4) (d), stats. Please review.

11. Please review this draft's treatment of ss. 51.135 and 51.61 (6).

12. I have made the change to the definition of "outpatient mental health treatment" in s. 51.14 (1) that it was my understanding that the group requested. However, since "inpatient treatment" is not defined, this definition now may be impermissibly vague. If I misunderstood the request, please let me know and I will redraft.

13. I have made s. 51.35 (3) (b) and (g), stats., apply to a minor who is voluntarily admitted under s. 51.13 (1) (c) 1., stats. Is this correct? Should s. 51.13 (7) apply to s. 51.35 (3) (g), stats.?

14. With regard to differentiating between outpatient and inpatient treatment, please review my amendments to s. 51.47 (1), stats.; correct? Note that this statute seems unclear as to whether *only* the parent or guardian or *also* the minor under 12 years of age need consent to outpatient treatment; do you want any change to clarify?

15. Please note that, both for inpatient treatment (s. 51.13 (1) (b), stats.) and outpatient treatment (s. 51.14 (1m), stats.), I have required that both the parent or guardian and the minor aged 14 or older consent and have specified that the parent or guardian may consent on behalf of a minor who refuses to do so. I have eliminated the authority under s. 51.14 (3) (a) and (f), stats., for a parent or guardian to seek review of the refusal of a minor aged 14 or older to provide informed consent for outpatient treatment, because the parent or guardian may override the minor's refusal. However, I have revised ss. 51.14 (3) (a) and 51.35 (3) (g), stats., to provide for an automatic review of the minor's need for outpatient treatment in the situation where the parent or guardian overrides the minor's refusal, as there is under s. 51.13 (4), stats., for such a situation involving inpatient treatment. Is this what you intend?

16. The group did not, according to my notes, address my Drafter's Note #4. for 05-1179/P1 concerning the release of records. Is s. 51.30 (5) (b) 1. and 2., stats., drafted as you wish?

17. Shouldn't s. 51.45 (10) (am), stats., apply only to a minor aged 12 or older, to be consistent with s. 51.47 (1), stats.?

Please let me know what further assistance I may provide you with regard to this draft.

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